

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RATEPAYER PARITY TRUST FUND RULEMAKING ) D.T.E. 01-45

COMMENTS OF  
FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
IN RESPONSE TO  
DEPARTMENT'S NOTICE OF INQUIRY

I. INTRODUCTION

On June 11, 2001, the Department of Telecommunications and Energy ("Department") pursuant to the Electric Restructuring Act of 1997 (Ch. 164 of the Acts of 1997)(the "Act"), opened an investigation in order to promulgate rules ("rulemaking") relative to the disbursement of monies appropriated from the Ratepayer Parity Trust Fund ("Trust"). Notice of Inquiry and Publication, D.T.E. 01-45 (June 11, 2001).

In its Order, the Department recognized authority for the establishment of the Fund came from the Act, wherein pursuant thereto, "electric distribution companies deposit personal and corporate tax revenues attributable to the sale of their assets, all penalties and fines collected under [the Act]." Order at 1. The Department notes that the enabling statute, located at G.L. c. 10, sec. 62, provides that the "amounts credited to the fund shall be held in Trust and used solely for the purpose of providing extraordinary assistance to those utilities experiencing difficulty in achieving the 15 percent rate reduction required by the [Act]." Order at 1. The Department's investigation was opened in order to determine how the Department should proceed with disbursements from the Trust. Order at 1.

The Department opened this initial comment period with a series of specific questions to ensure it received responses on particular issues. Order at 2. Fitchburg Gas and Electric Light Company ("FG&E") is pleased to provide its comments to the Department's inquiry and for its consideration. Our comments begin with a general overview in support of our proposed approach, followed by a specific response to each of the Department's questions .

## II. COMMENTS OF FG&E

### A. Overview

FG&E believes that the General Court enacted the provisions of the Electric Restructuring Law establishing the Ratepayer Parity Trust in order to provide an additional protection to insure that the anticipated benefits of the Law would be shared by all the Commonwealth's citizens, regardless of which electric distribution utility's service territory they resided in. That parity of benefits, according to a reasonable interpretation of the Act, is assured by all utility customers' continuing to receive the intended benefits of the 15% rate reduction from the rates charged by their own electric supplier as of August, 1997.

In spite of aggressive actions undertaken consistent with the Act to mitigate the costs of the transition to retail competition, including complete power supply divestiture and competitive bidding of energy supply service, and, in the case of some utilities, securitization of Transition Costs, the 15% rate reduction has been extraordinarily difficult to achieve. Some electric utility companies with significant levels of owned electric generation assets were able to mitigate the costs of transition to retail competition by selling generation assets and lowering Transition Costs from the net cash proceeds received as a result of those sales. Other utility companies with significant generation asset balances were also able to securitize and refinance the recovery of

these generation assets to further mitigate the costs of transition to retail competition. But utility companies like FG&E that have historically maintained much smaller proportions of owned generation assets and rather have relied on market based purchase power contracts to meet their energy obligations have not been able to obtain the same level of mitigation of the costs of the transition to retail competition from either generation asset sales or from securitization.

At present, some distribution companies -- such as FG&E -- are deferring significant amounts of both Standard Offer Service expenses and Transition Costs in order to meet the Act's requirement of a 15% rate reduction. Others are deferring neither Standard Offer Service expenses or Transitions Cost expenses, and are able to provide the rate reduction required by the Act. Still others are deferring portions of either the Standard Offer Service expenses or the Transition Costs, but not both, in order to meet the Act's rate reduction mandate.

It is FG&E's view that the utility companies that are currently incurring long-term cost deferrals related to the recovery of Standard Offer Service expenses or Transition Costs under the provisions of electric restructuring are clearly experiencing difficulty in maintaining the 15% rate reduction mandated by the Act. More importantly, current and futures customers of these distribution companies continue to face significant future rate increases to repay these long-term cost deferral balances plus the accumulated interest thereon. FG&E's customers, in particular, will continue to be burdened by rate increases necessary to recover these cost deferrals and accumulated interest for many years into the future.

The high level of cost deferrals being recorded by some utilities in order to meet the 15% rate, coupled with the significant burden these cost deferral balances place on current and future customers by the rate increases necessary to recover these cost deferrals, suggests that the ratepayer parity which the General Court had intended is not being achieved at present. For

example, in its May 25, 2001 letter in MDTE 00-66, FG&E Standard Offer Service Fuel Adjustment Report of the Deferral Balances and Rate Proposal (page 2), the Company was deferring Standard Offer Service costs of \$12 million and Transition Charges costs of \$7.7 million, or a total of \$19.7 million at March 31, 2001. These cost deferral balances represent 38% of FG&E's \$51.3 million year 2000 total electric retail revenues (\$19.7 million total deferral balance / \$51.3 million electric retail revenues).

Accordingly, FG&E's customers, and the customers of other electric distribution companies similarly situated, should be eligible for, and should benefit from disbursements from the Ratepayer Parity Trust. FG&E believes this result would be consistent with the intent of the General Court in establishing the Trust and would achieve the goal of insuring an equitable result. In order to help achieve this result, FG&E would prepare and file with the Department, upon the completion of this rulemaking proceeding, a Petition for Disbursement from the Ratepayer Parity Trust.

#### B. Response to Questions

Question (1): Propose a method [consistent with the provisions of the Act relative to the Fund] to determine the eligibility of electric distribution companies to receive monies held in the Fund. In proposing such a method, please discuss the roles and responsibilities of: (1) the Department; (2) the [electric] distribution companies; (3) the Secretary of Administration and Finance; (4) the Office of the Attorney General; (5) the General Court; and (6) others.

In order to determine eligibility for Trust funds the distribution company would demonstrate to the Department in a Petition that it has incurred significant long-term cost deferrals related to Standard Offer Service and Transition Costs in order to meet the 15% rate reduction and that the repayment of these deferral balances will require future rate increases to recover these deferrals from current and future customers.

The Department would manage the annual process of determining eligibility of each petitioner and approve that the level of payment from the Trust is in the “public interest” in accordance with the intent of the Electric Restructuring Act of 1997.

The Secretary of Administration and Finance would have overall responsibility to manage and account for the Trust, including reasonable and prudent investment thereof and would direct the Department of Revenue: to audit annual tax returns and regulatory filings of each distribution company subject to state income taxes, to calculate the tax amount to be transferred to the Trust on an annual basis as a result of the tax return audit of taxes paid related to divestiture of generation assets and to annually prepare and issue a Report of Fund activity that would be available to interested parties as well as to the Department for determination of Trust Balances and annual earnings on such balances.

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Question (2): What documentation would a distribution company be required to present to substantiate the need for "extraordinary assistance" to meet the 15 percent rate reduction?

In the Standard Offer Fuel Charge Adjustment proceedings (D.T.E. 00-66, D.T.E. 00-69, D.T.E. 00-70) and the distribution companies' adjustment mechanism reconciliation filings (see e.g. Fitchburg Gas and Elec. Light Co., D.T.E. 99-110 (order pending)), the Department has the opportunity to assure itself that all reasonable mitigation measures have been taken and that the distribution companies are continuing to minimize costs and are investigating every available avenue to avoid deferral of Standard Offer Service expenses and Transition Costs. Given these investigations, the existence of continued long-term cost deferral balances for Standard Offer Service or Transition Costs that make future rate increases necessary to recover these balances are sufficient evidence of the need for “extraordinary assistance” to meet the 15% rate reduction.

The distribution companies should be required to submit documentation to the Department in a consistent format, substantiating the existence and the level of cost deferral balances related to Standard Offer Service and Transition Costs, the level of these cost deferral balances relative to the annual retail revenues of the utility, and a demonstration that these cost deferral balances are long-term in nature and will require future rate increases to recover these cost deferrals from current and future customers.

Question (3): Please indicate how best to disburse the Fund (e.g. how to prioritize numerous requests, how to determine the allotment of funds per company, etc.).

The primary responsibility for administering and disbursing the Trust funds are the function of the Department and the Secretary for Administration and Finance. FG&E suggests the following four-step methodology to determine the prioritization among electric distribution companies to receive monies held in the Trust.

First, the Department would establish a filing period to set a specified time for the electric distribution companies to petition the Department that a portion of the Trust balance be disbursed to allow the distribution company to pay down cost deferral balances and to achieve parity for its electric customers as envisioned by the Act;

Second, as part of this petition, the distribution company applying for this disbursement must demonstrate the difficulty it is experiencing in meeting the 15% rate reduction and that it has met the eligibility criteria discussed in response to Question 1;

Third, the Department would then rank each distribution company's petition based on the petitioner's level of long-term cost deferral balances (e.g., maximum funding request) relative to

the most recent level of annual retail revenues. The highest ranked utility would have the highest ratio of long-term deferral balances relative to total retail revenues;

Fourth, the Department would then allocate the available tax receipts from the Fund based on the following priority:

- ?? Funds in the Trust would first be allocated to the highest ranked utility petitioner until that utility petitioner is at parity with the second ranked utility petitioner (i.e. the same rank, or same ratio of long-term cost deferrals to annual retail revenues);
- ?? Next funds would be allocated proportionately to the first and second ranked petitioners until they are both at parity with the third ranked petitioner;
- ?? Next funds would be allocated proportionately to the first, second and third ranked petitioners until they are at parity with the fourth ranked petitioner;
- ?? Funds in the Trust would continue to be allocated in a similar manner for any remaining petitioners.

This methodology appears to be the most equitable approach for all the Commonwealth's electric utility customers because it would allocate the available funds in proportion to a measure of the level of burden current and future customers of the various utility companies face as a result of the transition to retail competition and the legislatively mandated 15% rate reduction. Each eligible utility would then receive a pro rata share of the Trust to pay down the Standard Offer Service and Transition Cost deferrals, until (1) the funds in the Trust are depleted, (2) the relative long-term cost deferral burdens are equalized across the various utilities, or (3) the long-term cost deferrals balances of all utilities are eliminated.

Question (4): Pursuant to the Act, after February 2005 standard offer rates will no longer be available. Should the Fund be maintained until February 2005, or can it be terminated sooner since all distribution companies have met the 15 percent rate reduction required by the Act without necessitating disbursement of monies from the Fund?

FG&E believes the Trust funds should be disbursed annually and as quickly as possible to pay down long-term cost deferral balances and fulfill the purposes for which it was intended. It is expected that because the sale of generation assets have occurred over a number of years and some companies may still be in the process of divestiture, the Trust may receive future tax receipts that will fund the Trust balance in future years. Depending on the number of petitioners who annually apply for Trust disbursements, the Trust balance may not be depleted by February 2005.

FG&E recommends that in February 2004, based on the most recent Annual Report of Fund Balances prepared by the Department of Revenue, that the Department determine whether or not the Trust annual disbursements should be continued until all deferral balances have been eliminated. If all deferrals have been eliminated, then it would be appropriate for the Department to terminate the Trust and return any remaining monies to the general funds of the Commonwealth.

Question (5): Upon termination of the Fund, what should happen to the monies remaining in the Fund?

See response to Question 4

Question (6): For response by each distribution company: Please provide a summary of the amounts deposited in the Fund. Kindly breakdown the information by monies deposited as a result of: (a) revenues attributable to the sale of assets; (b) penalties and fines; and (c) income derived from the investment of those amounts.



FG&E has filed tax returns which include the Gain on the Sale of Generation Assets and FG&E has paid the related state taxes on that sale. In response to the requested information, FG&E provides the following:

- a) Attachment 1 details the formula and the amount of tax revenues paid to the Commonwealth by FG&E as part of their 1999 tax return. As indicated FG&E paid state taxes related to the Gain on the Sale of New Haven Harbor of \$44,844.
- b) FG&E's Electric Division did not pay any fines or penalties to the Commonwealth
- c) FG&E did not derive any income from the tax payment of \$44,844.

### III. CONCLUSION

Wherefore, having provided these comments, Fitchburg Gas and Electric Light Company appreciates the opportunity to respond to the Department's June 11, 2001 Notice of Inquiry and Publication, and requests that the Department gives due notice and consideration to the concerns and opinions expressed herein.

Respectfully submitted,  
FITCHBURG GAS AND ELECTRIC LIGHT COMPANY  
By its attorney,

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